


**FILED**  
**SAN MATEO COUNTY**

**FEB 28 2019**

**Clerk of the Superior Court**

By: 

1 James A. Murphy – 062223  
JMurphy@mpbf.com  
2 James A. Lassart – 40913  
JLassart@mpbf.com  
3 Joseph S. Leveroni – 304721  
JLeveroni@mpbf.com  
4 MURPHY, PEARSON, BRADLEY & FEENEY  
88 Kearny Street, 10<sup>th</sup> Floor  
5 San Francisco, CA 94108-5530  
Telephone: (415) 788-1900  
6 Facsimile: (415) 393-8087

7 Attorneys for Plaintiff's Counsel  
David S. Godkin (admitted *pro hac vice*)  
8 James E. Kruzer (admitted *pro hac vice*)  
Birnbaum & Godkin, LLP  
9 280 Summer Street  
Boston, MA 02210  
10 Telephone: (617) 307-6100  
Facsimile: (617) 307-6101  
11 godkin@birnbaumgodkin.com  
kruzer@birnbaumgodkin.com

12  
13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited  
liability company;

16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware  
19 corporation;  
20 MARK ZUCKERBERG, an individual;  
CHRISTOPHER COX, an individual;  
21 JAVIER OLIVAN, an individual;  
SAMUEL LESSIN, an individual;  
22 MICHAEL VERNAL, an individual;  
ILYA SUKHAR, an individual; and  
23 DOES 1 through 50, inclusive,

24 Defendants.  
25  
26  
27  
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Case No. CIV 533328

Assigned For All Purposes To  
Hon. V. Raymond Swope, Department 23

**DECLARATION OF DAVID S. GODKIN IN  
SUPPORT OF RESPONSE OF DAVID S.  
GODKIN, JAMES E. KRUZER AND  
BIRNBAUM & GODKIN, LLP TO  
DEFENDANT'S EX PARTE APPLICATION  
FOR AN ORDER ENFORCING THE  
STIPULATED PROTECTIVE ORDER**

Hearing:

Time

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

Trial Date: April 25, 2019

CIV533328  
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Declaration in Reply  
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1 I, David S. Godkin, declare:

2 1. I am a partner at the law firm of Birnbaum & Godkin, LLP ("B&G"), counsel of record  
3 for Plaintiff Six4Three, LLC ("643") in this case. I make this Declaration from personal knowledge,  
4 and if called to testify, I could and would competently testify thereto.

5 2. My firm retained two expert consultants to assist us with the litigation. One was Paul  
6 Dehaye, who is a well-known expert in digital privacy issues and qualified to provide expert opinions  
7 and analysis of such issues. Mr. Dehaye's assistance was required to rebut Facebook's arguments that  
8 its actions that forced 643 out of business were undertaken in the interests of protecting the privacy  
9 interests of Facebook's users. Mr. Dehaye executed the Certification required by this Court's  
10 Protective Order before he was provided with any of Facebook's confidential or highly confidential  
11 documents. By executing the Certification, Mr. Dehaye certified his understanding that Facebook's  
12 confidential and highly confidential information was provided to him pursuant to the terms and  
13 restrictions of the Protective Order. He certified that he had been given a copy of the Protective Order  
14 and that he had read it. He agreed to be bound by the Protective Order and certified that he understood  
15 and acknowledged that a failure to comply could expose him to sanctions and punishment in the nature  
16 of contempt. He agreed not to reveal Facebook's confidential or highly confidential information to  
17 anyone, except as allowed by the Protective Order. He agreed to maintain all such information in a  
18 secure manner to prevent unauthorized access to it.

19 3. In early January 2019, I informed Mr. Dehaye that my firm was not able to continue to  
20 represent 643 and that 643 was in the process of seeking to engage new counsel. I informed him that  
21 because my firm was withdrawing as counsel, my firm was terminating its engagement with him  
22 pursuant to our engagement letter with him. I also informed him that he would continue to be bound  
23 by the Protective Order. Finally, I directed Mr. Dehaye to return or destroy all Facebook confidential  
24 information that he had in his possession, including all documents referring to Facebook's confidential  
25 documents, and to confirm that he had done so. In response, on January 11, 2019, Mr. Dehaye  
26 confirmed that he had deleted all of Facebook's documents.

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4. My firm also retained a consultant to review Facebook's highly confidential documents to assist us in identifying potential deposition and trial witnesses. This consultant also signed the Protective Order Certification before we provided her with any Facebook documents. As with Mr. Dehaye, I terminated my firm's engagement with the consultant in early January 2019, and the consultant confirmed that all Facebook documents were returned to my firm or destroyed.

5. As set forth above, B&G only provided third parties with Facebook's confidential or highly confidential information in conformance with the Protective Order. At no time did B&G direct, authorize, condone, or otherwise sanction the release, disclosure, or commentary by experts and consultants of any confidential or highly confidential information to any third party, nor is it aware of any such activity.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed February 28, 2019 at Boston, Massachusetts.

  
David S. Godkin